

In the Matter of)
)
Amendment of Section 1.80(b) of the)
Commission's Rules)
)
Adjustment of Forfeiture Maxima to Reflect)
Inflation)
)
)

Released: June 18, 2004

¹ Under the rounding rules set forth in Section 1.80(b)(5)(ii), the inflation adjustment for a statutory forfeiture amount must reach a specific threshold before the forfeiture amount may be increased. Thus, different CPIs may be used to calculate the inflation factors for different statutory forfeitures, depending on when a particular forfeiture was last increased. The June 1999 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in Sections 202(c) (the amount for each violation, not the per day amount for continuing violations), 203(e) (the amount for each violation, not the per day amount for continuing violations), 220(d), 503(b)(2)(A) (the maximum amount for continuing violations, not the amount for a single violation or single day of a violation), 503(b)(2)(B), and 503(b)(2)(C) (the maximum amount for continuing violations, not the amount for a single violation or single day of a violation). The June 1995 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in Sections 202(d) (the per day amount for continuing violations), 203(e) (the per day amount for continuing violations), 205(b), 364(a), 364(b), 386(a), 386(b), 503(b)(2)(A) (the amount for a single violation or single day of a violation), 503(b)(2)(C) (the amount for a single violation or single day of a violation), 507(a), and 507(b). The June 1992 CPI is used to calculate the inflation factor for the Section 634 forfeiture amount, and the June 1989 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in Sections 214(d) and 219(b). Finally, the first inflation adjustment for each statutory forfeiture may not exceed 10 percent of the statutory maximum amount. See 47 C.F.R. § 1.80(b)(5), Note to Paragraph (b)(5). This is the first inflation adjustment for the statutory forfeiture amounts in Sections 364(b), 386(b) and 634 because this is the first time that the inflation adjustment for these forfeitures reached the specific threshold set forth in the rounding rules. Accordingly, the inflation adjustment for the forfeiture amounts in Sections 364(b), 386(b) and 634 is limited to 10 percent.

The increases were then rounded using the statutorily prescribed rules to produce the adjusted penalties. The Order also makes editorial amendments and corrections to Section 1.80(b).

3. The amendment of Section 1.80(b) simply implements the requirements of the Debt Collection Improvement Act of 1986, 28 U.S.C. § 2461, as incorporated in Section 1.80(b)(5) of our rules, as well as updates and clarifies the rule to reflect the statute more precisely without substantively changing it. Moreover, since Congress has mandated these periodic rule changes and the Commission has no discretion but to make them, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. § 553(b)(B).

4. Since a notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, does not apply.

5. The actions taken herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record keeping requirements or burdens on the public.

6. Accordingly, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and the Debt Collection and Improvement Act of 1996, 28 U.S.C. § 2461, IT IS ORDERED that 47 C.F.R. § 1.80(b) is AMENDED as set forth in the Appendix, EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1---PRACTICE AND PROCEDURE

Subpart A---General Rules of Practice and Procedure

Miscellaneous Proceedings

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 225, 303(r), and 309.

2. Section. 1.80 is amended by revising paragraph (b) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed \$32,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$325,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$130,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,325,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$97,500 for any single act or failure to act described in paragraph (a) of this section.

(4) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature,

circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

Note to paragraph (b)(4):

GUIDELINES FOR ASSESSING FORFEITURES

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in Section 503 of the Communications Act and the Commission's Rules are described in Section 1.80(b)(5)(iii). These statutory maxima became effective **30 days from publication in the Federal Register**. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

* * * * *

Section III. *Non-Section 503 Forfeitures That are Affected by the Downward Adjustment Factors*

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The following amounts are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. § 2461. These non-Section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for Section 503 forfeitures in Section II of this note.

Violation	Statutory amount (\$)
Sec. 202(c) Common Carrier Discrimination	8,600 430/day.
Sec. 203(e) Common Carrier Tariffs	8,600 430/day.
Sec. 205(b) Common Carrier Prescriptions	18,200.
Sec. 214(d) Common Carrier Line Extensions	1,320/day.
Sec. 219(b) Common Carrier Reports	1,320.
Sec. 220(d) Common Carrier Records & Accounts	8,600/day.
Sec. 364(a) Forfeitures (Ships)	6,500 (owner).
Sec. 364(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 386(a) Forfeitures (Ships)	6,500/day (owner).

Sec. 386(b) Forfeitures (Ships) 1,100 (vessel master).
 Sec. 634 Cable EEO 550/day.

(5) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Debt Collection Improvement Act of 1996, Public Law 104-134 (110 Stat. 1321-358), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101-410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation at least once every four years using the method specified in the statute. This is to be done by determining the ‘cost-of-living adjustment’, which is the percentage (if any) by which the CPI for June of the preceding year exceeds the CPI for June of the year the forfeiture amount was last set or adjusted. The inflation adjustment is determined by multiplying the cost-of-living adjustment by the statutory maximum amount. Round off this result using the rules in paragraph (b)(5)(ii) of this section. Add the rounded result to the statutory maximum forfeiture penalty amount. The sum is the statutory maximum amount, adjusted for inflation.

(ii)***

(iii) The application of the inflation adjustments required by the DCIA, 28 U.S.C. § 2461, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum penalty after DCIA adjustment
47 USC 202(c).....	\$8,600
	430
47 USC 203(e).....	8,600
	430
47 USC 205(b).....	18,200
47 USC 214(d).....	1,320
47 USC 219(b).....	1,320
47 USC 220(d).....	8,600
47 USC 362(a).....	6,500
47 USC 362(b).....	1,100
47 USC 386(a).....	6,500
47 USC 386(b).....	1,100
47 USC 503(b)(2)(A).....	32,500
	325,000
47 USC 503(b)(2)(B).....	130,000
	1,325,000
47 USC 503(b)(2)(C).....	11,000
	97,500
47 USC 507(a).....	650

47 USC 507(b).....	110
47 USC 554.....	550

* * * * *